

DANILO MORO, PETITIONER, VS. GENEROSO REYES DEL CASTILLO, JR., RESPONDENT.

G.R. No. 184980. March 30, 2011

Ponente: ABAD, J.

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ABAD, J.:

This case is about the right of the petitioner to be reinstated through an action for quo warranto against the present holder meantime that petitioner has appealed from the Ombudsman's decision dismissing him from the service for, among other grounds, misconduct in office.

The Facts and the Case

On December 7, 2005 the Ombudsman charged respondent Generoso Reyes Del Castillo, Jr. (Del Castillo), then Chief Accountant of the General Headquarters (GHQ) Accounting Center of the Armed Forces of the Philippines (AFP), with dishonesty, grave misconduct and conduct prejudicial to the best interest of the service in OMB-P-A-06-0031-A. The Ombudsman alleged that Del Castillo made false statements in his Statement of Assets and Liabilities from 1996 to 2004 and that he acquired properties manifestly out of proportion to his reported salary.

On April 1, 2006 the GHQ reassigned Del Castillo to the Philippine Air Force (PAF) Accounting Center by virtue of GHQ AFP Special Order 91 (SO 91).[1] Through the same order, petitioner Danilo Moro (Moro), then Chief Accountant of the Philippine Navy, took over the position of Chief Accountant of the GHQ Accounting Center.

Meantime, on August 30, 2006 the Ombudsman placed Del Castillo under preventive suspension for six months and eventually ordered his dismissal from the service on February 5, 2007.[2] The penalty imposed on him included cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government. Del Castillo filed a motion for reconsideration, which is pending to this date.

Following the lapse of his six-month suspension or on March 12, 2007 Del Castillo attempted to reassume his former post of GHQ Chief Accountant. But, he was unable to do so since Moro declined to yield the position. Consequently, on April 4, 2007 Del Castillo filed a petition for quo warranto[3] against Moro with the Regional Trial Court[4] (RTC) of Parañaque City in Civil Case 07-0111.

Del Castillo claimed that Moro was merely detailed as GHQ Chief Accountant when the Ombudsman placed Del Castillo under preventive suspension. Since the latter's period of suspension already lapsed, he was entitled to resume his former post and Moro was but a usurper. [5]

For his part, Moro pointed out in his Answer[6] that his appointment under SO 91 as GHQ Chief Accountant was a permanent appointment. Indeed, the GHQ had already reassigned Del Castillo to the PAF Accounting Center even before the Ombudsman placed him under preventive suspension. Del Castillo was, therefore, not automatically entitled to return to his former GHQ post despite the lapse of his suspension.

During the pendency of the quo warranto case before the RTC, Del Castillo refused to report at the PAF Accounting Center despite a memorandum from the AFP Acting Deputy Chief of Staff for Personnel that carried the note and approval of the AFP Chief of Staff.[7] Del Castillo insisted that he could not be placed under the PAF since he was the GHQ Chief Accountant.[8]

On October 10, 2007 the RTC dismissed Del Castillo's petition,[9] holding that Moro held the position of GHQ Chief Accountant pursuant to orders of the AFP Chief of Staff. Moreover, the RTC found Del Castillo's reassignment to the PAF Accounting Center valid. Under the Civil Service Commission (CSC) Rules, a reassignment may be made for a maximum of one year. Since Del Castillo's preventive suspension kept him away for only six months, he had to return to the PAF to complete his maximum detail at that posting. Besides, said the trial court, the Ombudsman's February 5, 2007 Order, which directed Del Castillo's dismissal from the service for grave misconduct, among others, rendered the petition moot and academic. The RTC denied Del Castillo's motion for reconsideration.

Instead of appealing from the order of dismissal of his action, Del Castillo filed a petition for certiorari with the Court of Appeals (CA) in CA-G.R. SP 103470. On October 13, 2008 the CA reversed the RTC Decision.[10] Notwithstanding the procedural error, the CA gave due course to the petition on grounds of substantial justice and fair play. It held that Del Castillo's reassignment exceeded the maximum of one year allowed by law and that SO 91 was void since it did not indicate a definite duration for such reassignment. Further, the CA held as non-executory the Ombudsman's dismissal of Del Castillo in view of his appeal from that dismissal. With the denial of his motion for reconsideration, Moro filed this petition via Rule 45 of the Rules of Court.

The Issue Presented

The key issue in this case is whether or not respondent Del Castillo is entitled to be restored to the position of Chief Accountant of the GHQ Accounting Center that he once held.

The Court's Ruling

An action for quo warranto under Rule 66 of the Rules of Court may be filed against one who usurps, intrudes into, or unlawfully holds or exercises a public office.[11] It may be brought by the Republic of the Philippines or by the person claiming to be entitled to such office.[12] In this case, it was Del Castillo who filed the action, claiming that he was entitled as a matter of right to reassume the position of GHQ Chief Accountant after his preventive suspension ended on March 11, 2007. He argues that, assuming his reassignment to the PAF Accounting Center was valid, the same could not exceed one year. Since his detail at the PAF took effect under SO 91 on April 1, 2006, it could last not later than March 31, 2007. By then, Moro should have allowed him to return to his previous posting as GHQ Chief Accountant.

But, as Moro points out, he had been authorized under SO 91 to serve as GHQ Chief Accountant. Del Castillo, on the other hand, had been ordered dismissed from the service by the Ombudsman in OMB-P-A-06-0031-A. Consequently, he cannot reassume the contested position.

Del Castillo of course insists, citing *Lapid v. Court of Appeals*,^[13] that only decisions of the Ombudsman that impose the penalties of public censure, reprimand, or suspension of not more than a month or a fine of one month salary are final, executory, and unappealable. Consequently, when the penalty is dismissal as in his case, he can avail himself of the remedy of appeal and the execution of the decision against him would, in the meantime, be held in abeyance.

But, the *Lapid* case has already been superseded by *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*.^[14] The Court held in *Datumanong* that Section 7, Rule III of

Administrative Order 7, as amended by Administrative Order 17,[15] clearly provides that an appeal shall not stop a decision of the Ombudsman from being executory. The Court later reiterated this ruling in *Office of the Ombudsman v. Court of Appeals*.^[16]

In quo warranto, the petitioner who files the action in his name must prove that he is entitled to the subject public office. Otherwise, the person who holds the same has a right to undisturbed possession and the action for quo warranto may be dismissed.^[17]

Here, Del Castillo brought the action for quo warranto in his name on April 4, 2007, months after the Ombudsman ordered his dismissal from service on February 5, 2007. As explained above, that dismissal order was immediately executory even pending appeal. Consequently, he has no right to pursue the action for quo warranto or reassume the position of Chief Accountant of the GHQ Accounting Center.

WHEREFORE, the Court GRANTS the petition, REVERSES and SETS ASIDE the decision dated October 13, 2008 of the Court of Appeals in CA-G.R. SP 103470, and REINSTATES the October 10, 2007 decision of the Regional Trial Court in Civil Case 07-0111, which dismissed the complaint for quo warranto.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

[1] Records, p. 113.

[2] Rollo, pp. 88-115.

[3] Records, pp. 41-54.

[4] Branch 274.

[5] Records, pp. 47-48.

[6] Id. at 99-111.

[7] Id. at 121-122.

[8] Id. at 123.

[9] Rollo, pp. 48-54. Penned by Presiding Judge Fortunito L. Madrona.

[10] Id. at 58-87. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Amelita G. Tolentino and Arcangelita M. Romilla-Lontok.

[11] Rule 66, Section 1. Action by Government against individuals.

An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

- (a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;
- (b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or
- (c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.

[12] Rule 66, Section 5. When an individual may commence such an action.

A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.

[13] G.R. No. 142261, June 29, 2000, 334 SCRA 738.

[14] G.R. No. 150274, August 4, 2006, 497 SCRA 626.

[15] Section 7. Finality and execution of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from the receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be ground for disciplinary action against said officer. (Emphasis supplied)

[16] G.R. No. 159395, May 7, 2008, 554 SCRA 75, 93-94.

[17] Feliciano v. Villasin, G.R. No. 174929, June 27, 2008, 556 SCRA 348, 366.

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